



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,714	03/23/2004	Maurice Eduardus Theodorus van Esbroeck	V0028/298621	2660

23370 7590 03/02/2007
JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
ATLANTA, GA 30309

EXAMINER

MACKEY, JAMES P

ART UNIT	PAPER NUMBER
----------	--------------

1722

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/806,714	Applicant(s) VAN ESBROECK ET AL.	
	Examiner James Mackey	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10, 13-17, 21-26, 28-30, 32-37 and 39-50 is/are pending in the application.
4a) Of the above claim(s) 6-10, 22-26, 32-37 and 39 is/are withdrawn from consideration.
5) ☒ Claim(s) 13, 14, 21, 40-43, 49 and 50 is/are allowed.
6) ☒ Claim(s) 15-17, 28-30 and 44-48 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1722

1. Claims 6-10, 22-26, 32-37 and 39 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 21 March 2006.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 47 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure does not adequately describe additive feed means positioned between the pump device and the mass-feed component, as is now claimed in new claim 47. While the original disclosure does describe additive feed means for feeding additives to the pump device (see paragraph 155 and Figure 13), the original disclosure does not adequately describe such additive feed means between the pump device and the mass-feed component.

4. Claim 45 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 45 merely describes where the product is removed from the cavity; such does not set forth additional structure of the claimed apparatus, but rather merely describes how the

Art Unit: 1722

claimed apparatus is intended to be operated during its intended use, which does not patentably distinguish apparatus structure and therefore does not further limit the subject matter of the apparatus claims. Note that intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530; the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, *In re Casey*, 152 USPQ 235; purpose to which apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Benham et al. (U.S. Patent 5,752,364).

Benham et al. '364 teach a molding device comprising a movable mold drum 18 having cavities 24 opening along a first surface of the drum, a mass-feed component 36' positioned adjacent the drum for feeding mass into the cavities, and a deformable elastic belt 66 (col. 5, line 64 through col. 6, line 15) of plastic material (e.g. polyethylene, col. 6, line 14) bearing against the first surface of the drum from a position upstream of the mass-feed component until at least removal of the mass from the cavities.

7. Claims 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Israel (U.S. Patent 5,683,734; Figure 1).

Art Unit: 1722

Israel teaches a molding device comprising a movable mold drum 14 having cavities 16 opening along a first surface of the drum, a mass-feed component 18 positioned adjacent the drum for feeding mass into the cavities, and a deformable elastic belt 10 (col. 3, lines 28-35) of plastic material (e.g. polyethylene or polyvinylchloride, col. 3, lines 33-34) bearing against the first surface of the drum from a position upstream of the mass-feed component until at least removal of the mass from the cavities.

8. Claim 47 is rejected under 35 U.S.C. 102(b) as being anticipated by Benham et al. (U.S. Patent 5,752,364).

Benham et al. '364 teach a molding device comprising a movable mold drum 18 having cavities 24 opening along a first surface of the drum, a mass-feed component 36' positioned adjacent the drum for feeding mass into the cavities, extruder pump 54 coupled to the mass-feed component, and additive feed means 102a, 102b positioned between the extruder pump and the mass-feed component for feeding additives to the mass of material.

9. Claim 47 is rejected under 35 U.S.C. 102(b) as being anticipated by Schreier (U.S. Patent 1,487,812).

Schreier teaches a molding device comprising a drum 29 moving along a path and including mold cavities 39 having openings positioned along the first outer surface of the drum, a mass-feed component 23, 31 positioned adjacent the drum, a pump device 11, 15 coupled to the mass-feed component, and additive feed means 18, 19 positioned between the pump device and the mass-feed component for feeding additives to the mass.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1722

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 28-30, 46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benham et al. (U.S. Patent 5,752,364) in view of Hannaford (U.S. Patent 5,536,517).

Benham et al. '364 disclose a molding device comprising a movable mold drum 18 having cavities 24 opening along a first surface of the drum, a mass-feed component 36' positioned adjacent the drum for feeding mass into the cavities, closure means 20 for temporarily closing the cavity opening, pump devices 104 coupled to the mass-feed component, and additive feed means 102a, 102b for feeding additives to the mass of material. Benham et al. '364 do not

Art Unit: 1722

disclose that the additive feed means feeds additives to the pump device. Hannaford discloses a molding device including additive feed means 116, 117, 120 for feeding additives to a mass of material in a pump device 70. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Benham et al. '364 by providing the additive feed means at a pump device, as disclosed in Hannaford, since such were equivalent means for providing additives to a mass of material being pumped. It would have been further obvious to a skilled artisan to have utilized a screw extruder pump device instead of the gear pump device of Benham et al., since such were equivalent means for pumping a mass of material.

14. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al. (U.S. Patent 5,846,588; Figure 10) in view of Vogt (U.S. Patent 2,949,713).

Zimmermann et al. disclose a molding device comprising a drum 18 moving along a path and including mold cavities 24 having openings positioned along the first outer surface of the drum, a mass-feed component 42 positioned adjacent the drum, film feed means 68 positioned adjacent the drum and upstream of the mass-feed component for placing a film to cover the cavities before mass is fed into the cavity, and film coating means 160 positioned adjacent the drum between the film feed means and the mass-feed component to apply a coating to the film. Zimmermann et al. do not disclose vacuum means for removing air from the mold cavity covered by the film, and ejector means for removing the mass from the cavity. Vogt discloses a molding device comprising a movable mold drum 10, 18 having cavities 23, 27 opening along a first surface of the drum, a mass-feed component 43 positioned adjacent the drum, film feed means for feeding a film S to cover the cavities before mass is fed into the cavity, a connecting passage 33, 34 connecting each cavity and a second surface of the drum, vacuum means 36, 39 for

Art Unit: 1722

removing air from the cavities to conform the film to the cavity, and ejector means for removing the mass from the cavity via aeration means 39, 67 for feeding air into the cavities. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Zimmermann et al. by providing vacuum means for conforming the film to the cavity, as disclosed in Vogt, in order to positively and accurately seat the film into each mold cavity. It would have been further obvious to a skilled artisan to modify Zimmermann et al. by providing ejector means including aeration means communicating with a connecting passage for each mold cavity, as disclosed in Vogt, in order to facilitate the ejection of the molded products from the mold cavities.

15. Claims 13, 14, 21, 40-43, 49 and 50 are allowed.

16. Applicant's arguments with respect to claims 15-17, 28-30 and 44-48 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

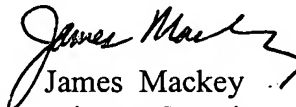
Art Unit: 1722

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Mackey whose telephone number is 571-272-1135. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


James Mackey
Primary Examiner
Art Unit 1722
2/28/07

jpm
February 28, 2007